STATE OF MICHIGAN

COURT OF APPEALS

MICHAEL MABIN, Plaintiff-Appellant,	UNPUBLISHED October 20, 2015
v	No. 323043 Oakland Circuit Court
HSBC MORTGAGE SERVICES, INC., Defendant-Appellee.	LC No. 2014-140141-NZ

Before: GLEICHER, P.J., and SAWYER and MURPHY, JJ.

PER CURIAM.

Plaintiff Michael Mabin commenced this lawsuit against defendant HSBC Mortgage Services, Inc., in an effort to stop HSBC's foreclosure by advertisement of a mortgage on plaintiff's real property held by HSBC that secured a promissory note executed by plaintiff. The primary argument proffered by plaintiff was that HSBC had violated a 2011 loan modification agreement, which plaintiff sought to enforce. On HSBC's motion for summary disposition, the trial court ruled that the 2011 agreement was temporary and there was no guarantee that its provisions would be extended beyond its limited period of application. Moreover, the trial court ruled that any loan modification agreement was superseded when plaintiff entered into a subsequent modification of the loan in 2013, resulting in a novation. For these reasons, the trial court granted HSBC's motion for summary disposition. Plaintiff appeals as of right, and we affirm.

On December 11, 2006, plaintiff executed a promissory note in favor of HSBC, with plaintiff borrowing $334,000 and agreeing to pay HSBC $2,665 per month over 30 years at a fixed interest rate of 8.910%. On that same date, plaintiff, as mortgagor, granted HSBC, as mortgagee, a mortgage on plaintiff's home as security for the underlying promissory note. The mortgage contained a standard power-of-sale clause, allowing for foreclosure by advertisement following default and acceleration of the debt. See MCL 600.3201 ("Every mortgage of real estate, which contains a power of sale, upon default being made in any condition of such mortgage, may be foreclosed by advertisement . . . .").

According to HSBC, in October 2009, plaintiff was approved for a short-term loan modification of six months that lowered his monthly payments to $1,855, after which plaintiff resumed making payments of $2,665 per month, as called for by the original note. In May 2011, plaintiff faxed a request to HSBC for a loan modification under its Hardship Program. In an affidavit submitted below, plaintiff averred that the request for a loan modification was necessary due to a significant decline in plaintiff's income. Pursuant to a letter from HSBC to plaintiff

dated October 21, 2011, HSBC indicated that it had approved plaintiff's request for assistance under HSBC's Hardship Program. The letter provided that HSBC would temporarily adjust the interest rate of the loan to 5.25% for six months and that plaintiff's monthly mortgage payments would temporarily be reduced to $1,850. The letter additionally stated:

> All payments must be made in accordance with the temporary Loan Modification Agreement. In modifying the terms of the original loan agreement, there may be a negative impact to your credit score. Your temporary modified payment amount will be accepted as of December 1, 2011.
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> Upon completion of the temporary loan modification, your loan will revert to the interest rate and payment schedule set forth by your Note and Security Instrument. . . . Your temporary loan modification is set to expire on or after 05/01/12. *You may be eligible for an extension of payment relief at the end of the temporary modification period. To be eligible, you must make all contractual payments that are due during your temporary loan modification period, and demonstrate your continuing need for assistance once that loan modification has ended*.
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> . . .
>
> HSBC . . . has temporarily modified your loan wholly as a consideration. All obligations, rights and remedies set out in your Note and Security Instrument remain in full force and effect. [Emphasis added.[1]]

In his affidavit, plaintiff averred that in October or November 2011, he had spoken by phone with an HSBC representative about the temporary modification and the representative informed plaintiff that he "could continue to make the modified payment amount provided [that plaintiff] made all [his] modified payments through the trial period and [the] hardship continued." Plaintiff further asserted, and there is no dispute, that he made all of the required loan payments during the temporary loan modification period. He averred that in April 2012, HSBC personnel advised plaintiff that he needed to provide financial documents in order to establish his continuing need for the loan modification. Plaintiff claimed in his affidavit that he faxed the requested financial documents to HSBC later in April 2012.

Plaintiff averred that HSBC refused to accept the modified monthly payment amount of $1,850 after May of 2012, at which time HSBC began demanding monthly payments of $2,519

[1] We note that the parties focus their arguments on construction of the language in this letter, particularly the emphasized language, with respect to whether HSBC was obligated to provide plaintiff with an extension of the temporary loan modification upon satisfaction of payment requirements during the temporary period and proof of continuing financial need. The letter references an associated temporary loan modification agreement; however, it is unclear whether such an agreement was ever executed. Regardless, assuming the existence of a signed agreement consistent with the letter or otherwise, it was never made part of the lower court record. The parties effectively treat the letter as the temporary loan modification agreement.

under a two-month trial period plan (TPP). In a timeline prepared by HSBC,[2] it indicated that the temporary loan modification ($1,850 monthly rate) had expired under its own terms on May 1, 2012, and that the original contract rate of $2,665 was then reinstituted. HSBC's timeline further reflected that on April 30, 2012, plaintiff had faxed HSBC a request for yet another loan modification. According to HSBC, on May 25, 2012, it approved a two-month TPP, pursuant to which plaintiff was required to make payments of $2,519 on June 22 and July 22, 2012, in order to obtain a permanent loan modification. While the first payment was timely made, the second payment was not made in accordance with the TPP, and HSBC thus rejected modification of the loan. In plaintiff's affidavit, he acknowledged that the second payment under the TPP was late and that HSBC therefore refused to continue accepting the $2,519 amount and would not agree to a further loan modification.

In January 2013, ostensibly because plaintiff was struggling with or not making his loan payments, HSBC offered plaintiff a new two-month TPP, which, if satisfied, would lead to a new loan modification agreement. Under the 2013 TPP, plaintiff was required to make monthly payments of $3,031 on February 23 and March 25, 2013. Plaintiff timely made the two $3,031 payments, and by letter dated April 11, 2013, HSBC informed plaintiff that he had successfully completed the TPP and was thus approved for a loan modification. On April 23, 2013, plaintiff executed the new loan modification agreement. This agreement required plaintiff to make monthly payments of $3,055, commencing on May 1, 2013, with an interest rate of 8.410%. The loan modification agreement also provided that it "shall supersede the terms of any modification, forbearance or [TPP] that [was] previously entered into with [HSBC]." In plaintiff's affidavit, he claimed that HSBC had demanded that he enter into the latest loan modification agreement under threat of foreclosure. Plaintiff further averred that he lacked legal representation "and believed HSBC's threats that if [he] didn't make the higher payments . . ., [HSBC] would foreclose."

As asserted in HSBC's timeline, in July 2013, plaintiff contacted HSBC and advised it that he was having difficulty making his monthly mortgage payments under the 2013 loan modification agreement. HSBC further indicated that in December 2013, it sent plaintiff a notice of right to cure default, and that in March of 2014, HSBC delivered a notice of foreclosure sale to plaintiff, which sale was scheduled for April 22, 2014. On April 14, 2014, plaintiff filed the instant action against HSBC to quiet title and for other relief. The main theme of plaintiff's complaint was that the loan modification agreement (hereafter "LMA") entered into in 2011 (temporary $1,850 monthly payment), as opposed to the 2013 LMA ($3,055 monthly payment), governed the parties' rights and obligations in relationship to the note and mortgage. Plaintiff alleged that he had a contractual right to have the 2011 LMA continue indefinitely, given his full compliance with the payment requirements during the temporary period and so long as he could establish an ongoing financial hardship, which condition was satisfied. Plaintiff's complaint alleged causes of action for violation of the foreclosure-by-advertisement statutes, MCL 600.3201 *et seq.*, breach of contract, fraud and misrepresentation, promissory estoppel, and violations of the Mortgage Brokers, Lenders, and Servicers Licensing Act (MBLSLA), MCL 445.1651 *et seq.* Plaintiff sought declaratory relief, damages, equitable relief, and attorney fees and costs. On April 17, 2014, the trial court entered a temporary restraining order, halting the scheduled sheriff's sale.

[2] The trial court ordered both parties to prepare and file timelines, and they both complied.

In lieu of filing an answer, on May 6, 2014, HSBC filed a motion for summary disposition pursuant to MCR 2.116(C)(8) and (10). HSBC first argued that the 2011 LMA[3] was temporary and expired on May 1, 2012, under its own terms. HSBC contended that the 2011 LMA merely indicated that plaintiff "*may be eligible* for an extension" (emphasis added), and thus there was no guarantee of an extension, nor any obligation to grant plaintiff an extension, even if the temporary monthly payments had been made and plaintiff's financial struggles continued. HSBC maintained that it ultimately never contractually agreed or promised to continue the 2011 LMA beyond its period of temporary application. HSBC next argued that any claims related to averments in plaintiff's affidavit that HSBC personnel had orally promised him an extension of the 2011 LMA are barred by the statute of frauds under MCL 566.132(2).[4] HSBC further asserted that plaintiff's claims were subject to dismissal because he accepted the 2013 LMA, which superseded the 2011 LMA, making the 2011 LMA unenforceable under novation principles, assuming its enforceability in the first place with respect to an extension. Finally, HSBC argued that plaintiff failed to plead his fraud claim with particularity and that the fraud claim also failed because any reliance on purported HSBC oral representations would have been unreasonable given the clear language in the 2011 LMA indicating its temporary nature and the mere possibility of an extension.

To avoid redundancy, we shall discuss plaintiff's position with respect to HSBC's summary disposition arguments in the analysis portion of this opinion, to the extent that an argument made by plaintiff below is renewed on appeal. The trial court conducted a hearing on HSBC's motion for summary disposition and took the matter under advisement. On July 21, 2014, the trial court issued a short written opinion and order granting summary disposition in favor of HSBC. The opinion and order provided, in pertinent part, as follows:

> The clear unambiguous language of the [2011 LMA] fails to support Plaintiff's assertion that the loan modification was permanent. By its express terms, the [2011 LMA] temporarily adjusted the loan interest rate for 6 months

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[3] Again, the parties treat the 2011 temporary modification acceptance letter sent by HSBC to plaintiff as an LMA, and considering that HSBC fully accepts that proposition and for ease of reference, we shall likewise treat and refer to the acceptance letter as the 2011 LMA.

[4] MCL 566.132(2) provides in relevant part:

> An action shall not be brought against a financial institution to enforce any of the following promises or commitments of the financial institution unless the promise or commitment is in writing and signed with an authorized signature by the financial institution:
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> . . .
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> (b) A promise or commitment to renew, extend, modify, or permit a delay in repayment or performance of a loan, extension of credit, or other financial accommodation.

> and provided that upon completion of the temporary loan modification, the loan would revert to the interest rate and payment schedule set forth in the Note and Security Instrument. While it did provide certain circumstances under which Plaintiff may have been eligible for an extension of payment relief, it did not guarantee that Plaintiff would receive an extension of the [2011 LMA]. In addition, once Plaintiff accepted the [2013 LMA], it superseded any prior modification agreement. The Court finds that Plaintiff has failed to state valid claims against [HSBC] and there is no genuine issue of material fact that the claims are barred by the doctrine of novation.

Plaintiff appeals as of right.

We review de novo a trial court's ruling on a motion for summary disposition. *Elba Twp v Gratiot Co Drain Comm'r*, 493 Mich 265, 277; 831 NW2d 204 (2013).[5] We similarly review de novo questions regarding the existence, construction, and application of a contract. *Rory v Continental Ins Co*, 473 Mich 457, 464; 703 NW2d 23 (2005); *Klapp v United Ins Group*

[5] MCR 2.116(C)(8) provides for summary disposition when a complaining party fails "to state a claim on which relief can be granted." A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of a complaint. *Beaudrie v Henderson*, 465 Mich 124, 129; 631 NW2d 308 (2001). The trial court may only consider the pleadings in rendering its decision. *Id.* All factual allegations in the complaint must be accepted as true. *Dolan v Continental Airlines / Continental Express*, 454 Mich 373, 380-381; 563 NW2d 23 (1997). "The motion should be granted if no factual development could possibly justify recovery." *Beaudrie*, 465 Mich at 130. With respect to the well-established principles governing the analysis of a motion for summary disposition brought pursuant to MCR 2.116(C)(10), this Court in *Pioneer State Mut Ins Co v Dells*, 301 Mich App 368, 377; 836 NW2d 257 (2013), stated:

> In general, MCR 2.116(C)(10) provides for summary disposition when there is no genuine issue regarding any material fact and the moving party is entitled to judgment or partial judgment as a matter of law. A motion brought under MCR 2.116(C)(10) tests the factual support for a party's claim. A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the pleadings, affidavits, and other documentary evidence, when viewed in a light most favorable to the nonmovant, show that there is no genuine issue with respect to any material fact. A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ. The trial court is not permitted to assess credibility, weigh the evidence, or resolve factual disputes, and if material evidence conflicts, it is not appropriate to grant a motion for summary disposition under MCR 2.116(C)(10). A court may only consider substantively admissible evidence actually proffered relative to a motion for summary disposition under MCR 2.116(C)(10). [Citations and quotation marks omitted.]

Agency, Inc, 468 Mich 459, 463; 663 NW2d 447 (2003); *Kloian v Domino's Pizza, LLC*, 273 Mich App 449, 452; 733 NW2d 766 (2006).

Plaintiff first argues on appeal that HSBC and the trial court failed to specify how or why each one of plaintiff's particular causes of action alleged in the complaint was subject to summary dismissal under MCR 2.116(C)(8) for failure to state a claim. HSBC's motion for summary disposition was brought pursuant to MCR 2.116(C)(8) and (10), and the trial court cited both of those provisions in granting the motion. In the context of reviewing a summary disposition ruling alluding to both MCR 2.116(C)(8) and (10), when a trial court clearly looked beyond the pleadings in resolving the motion, we review the court's ruling as having been decided under (C)(10) and not (C)(8). *Collins v Detroit Free Press, Inc*, 245 Mich App 27, 31; 627 NW2d 5 (2001). Here, the trial court, in deciding the motion for summary disposition, examined and relied on the language in the 2011 and 2013 LMAs, which were part of the documentary evidence submitted by the parties with respect to summary disposition. Plaintiff had also attached the 2011 LMA to his complaint, as required for a claim "based on a written instrument," effectively making it "a part of the pleading for all purposes." MCR 2.113(F)(1)-(2). This would include consideration of the 2011 LMA for purposes of summary disposition under MCR 2.116(C)(8). See *AFP Specialties, Inc v Vereyken*, 303 Mich App 497, 512-513; 844 NW2d 470 (2014); *Karam v Law Offices of Ralph J Kliber*, 253 Mich App 410, 418 n 6; 655 NW2d 614 (2002). With respect to granting summary disposition on the basis of the 2013 LMA and the doctrine of novation, the trial court looked beyond the pleadings, thereby implicating MCR 2.116(C)(10) and not (C)(8). And, given that the 2011 LMA became part of the pleadings but was also submitted as documentary evidence in connection to the motion for summary disposition, the trial court's decision to grant summary disposition on the basis that the 2011 LMA did not contractually require an extension implicated both MCR 2.116(C)(8) and (10).

A review of the specific causes of action asserted by plaintiff in his complaint reveals that they were all ultimately predicated on the 2011 LMA and the claimed contractual right to an extension of that LMA under the circumstances, or the alleged oral representations made by HSBC personnel to plaintiff that the 2011 LMA would be extended upon payment compliance and continuing financial hardship, or both the 2011 LMA and the oral representations. The trial court ruled that the 2011 LMA did not guarantee an extension even if plaintiff made the temporary payments and was still struggling financially and that, regardless, the 2011 LMA was superseded by the 2013 LMA under the doctrine of novation. These rulings could be viewed as not speaking directly to plaintiff's claims that were based on the alleged oral representations by HSBC personnel, e.g., promissory estoppel, fraud, and violation of the MBLSLA. However, the 2013 LMA provided that it "supersede[d] the terms of *any* modification, forbearance or [TPP] that [was] previously entered into with [HSBC]." (Emphasis added.) And the trial court ruled that the 2013 LMA "superseded *any* prior modification agreement." (Emphasis added.) The 2013 LMA and the trial court's ruling did not distinguish between prior *written* and prior *oral* agreements or promises for purposes of being superseded. Accordingly, our analysis and

holding below regarding novation and the superseding capacity of the 2013 LMA apply equally to the written 2011 LMA and the alleged oral representations made in 2011.[6]

We now examine the 2011 LMA, which plaintiff argues gave him a contractual right to an extension beyond the temporary period if he satisfactorily complied with the decreased monthly payment requirements and could show ongoing financial hardship. Plaintiff contends that because he made the temporary monthly payments and submitted documents establishing a continuing financial hardship, HSBC was obligated to extend the 2011 LMA. We disagree.[7]

"In Michigan, the essential elements of a valid contract are (1) parties competent to contract, (2) a proper subject matter, (3) a legal consideration, (4) mutuality of agreement, and (5) mutuality of obligation." *Thomas v Leja*, 187 Mich App 418, 422; 468 NW2d 58 (1991). "A valid contract requires mutual assent on all essential terms[,]" and "[b]efore a contract can be completed, there must be an offer and acceptance." *Eerdmans v Maki*, 226 Mich App 360, 364; 573 NW2d 329 (1997). In *Burkhardt v Bailey*, 260 Mich App 636, 656-657; 680 NW2d 453 (2004), this Court recited the core principles of contract interpretation:

> [The] unilateral subjective intent of one party cannot control the terms of a contract. It is beyond doubt that the actual mental processes of the contracting parties are wholly irrelevant to the construction of contractual terms. Rather, the law presumes that the parties understand the import of a written contract and had the intention manifested by its terms.
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> The main goal of contract interpretation generally is to enforce the parties' intent. But when the language of a document is clear and unambiguous, interpretation is limited to the actual words used, and parol evidence is inadmissible to prove a different intent. An unambiguous contract must be enforced according to its terms. The judiciary may not rewrite contracts on the basis of discerned "reasonable expectations" of the parties because to do so is contrary to the bedrock principle of American contract law that parties are free to contract as they see fit, and the courts are to enforce the agreement as written absent some highly unusual circumstance, such as a contract in violation of law or public policy. [Citations and quotation marks omitted.]

Here, the parties do not dispute that the 2011 LMA was a valid contract, and there is no disagreement regarding the parties' rights and obligations *during or with respect to the*

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[6] Moreover, as argued by HSBC below and on appeal, and despite the trial court's failure to reach the issue in its opinion and order, the statute of frauds as set forth in MCL 566.132(2) quite clearly bars plaintiff's claims that were based on oral promises or communications regarding an extension of the 2011 LMA. See footnote 4 above; *Crown Technology Park v D & N Bank, FSB*, 242 Mich App 538, 548-553; 619 NW2d 66 (2000) (statutory provision bars all actions, even one based on promissory estoppel).

[7] We note that plaintiff never specifically argued nor submitted evidence showing that, had the 2011 LMA actually been extended, he would not have been in default and subject to foreclosure in light of payments that were made thereafter.

temporary six-month period. The dispute that arose concerned the construction of the 2011 LMA in regard to its possible extension beyond the temporary period. Plaintiff is essentially arguing that the 2011 LMA, aside from providing the contractual terms for the temporary period, created two conditions precedent (payments made during temporary period and continuing financial hardship), which, if satisfied, contractually obligated HSBC to extend the 2011 LMA beyond the temporary period and legally entitled plaintiff to such an extension. In *Harbor Park Market, Inc v Gronda*, 277 Mich App 126, 131; 743 NW2d 585 (2007), this Court discussed conditions precedent, observing:

> A condition precedent . . . is a fact or event that the parties intend must take place before there is a right to performance. If the condition is not satisfied, there is no cause of action for a failure to perform the contract. However, . . . promisors . . . cannot avoid liability on [a] contract for the failure of a condition precedent where they caused the failure of the condition. [Citations and quotation marks omitted.]

A plain reading of the 2011 LMA indicates that it did not create conditions precedent giving rise to a right to performance – an extension of the LMA – if satisfied. Again, the 2011 LMA provided that plaintiff "may be eligible for an extension of payment relief[,]" and that "[t]o be eligible, [plaintiff] must make all contractual payments that are due during [the] temporary loan modification period[] and demonstrate [a] continuing need for assistance once [the] loan modification has ended." At best, considering the lack of any dispute that plaintiff made the temporary monthly payments, and given that his financial hardship was apparently ongoing, the 2011 LMA merely made plaintiff "eligible" for an extension. The term "eligible" simply means that a person is "qualified to participate or [to] be chosen." *Merriam-Webster's Collegiate Dictionary* (11th ed). Had the 2011 LMA instead contained mandatory language, e.g., entitled, obligated, must, shall, or guarantee, in connection with an extension upon satisfaction of the conditions, only then would true conditions precedent have existed as to a right to an extension. The trial court correctly determined that the 2011 LMA did not guarantee plaintiff an extension. Accordingly, all of plaintiff's claims premised on contractual entitlement to an extension on the basis of the language in the 2011 LMA fail.

Furthermore, the trial court correctly determined that the 2013 LMA superseded the 2011 LMA, resulting in a novation, even assuming that the 2011 LMA had created a contractual right to an extension under the circumstances. "A novation requires: (1) parties capable of contracting; (2) a valid obligation to be displaced; (3) consent of all parties to the substitution based upon sufficient consideration; and (4) the extinction of the old obligation and the creation of a valid new one." *In the Matter of the Dissolution of F Yeager Bridge & Culvert Co*, 150 Mich App 386, 410; 389 NW2d 99 (1986).

Plaintiff initially argues, in cursory and conclusory form, that there was no recognizable novation because the consideration was insufficient to support a novation. In *Keppen v Rice*, 257 Mich 299, 301; 241 NW 156 (1932), our Supreme Court stated that "[c]onsideration for [a] novation is essential, but that is furnished by the mutual agreement of the parties." The 2013 LMA reflected a mutual agreement reached by the parties. Moreover, "consideration" is something of value, which can include an act, a forbearance, a performance, a return promise, or the modification of a legal relationship. *Timko v Oakwood Custom Coating, Inc*, 244 Mich App 234, 244; 625 NW2d 101 (2001). Under the 2013 LMA, plaintiff promised to pay a new and

higher monthly mortgage amount and HSBC effectively refrained from immediately enforcing the debt pursuant to the terms of the original note and mortgage, i.e., HSBC agreed to a forbearance that staved off foreclosure. We also note that the interest rate was slightly reduced in the 2013 LMA. "Courts will not ordinarily inquire into the adequacy of consideration[.]" *Moffit v Sederlund*, 145 Mich App 1, 11; 378 NW2d 491 (1985). In sum, the novation was supported by sufficient consideration.

Plaintiff finally contends that the novation was barred by coercion or economic duress. The basis for this argument is plaintiff's claim that he signed the 2013 LMA only because he was threatened with foreclosure. In *Allard v Allard*, 308 Mich App 536, 551-552; __ NW2d __ (2014), this Court addressed the contract defense of duress, observing:

> A contract may be deemed unenforceable if it was executed under duress. To succeed with respect to a claim of duress, defendants must establish that they were illegally compelled or coerced to act by fear of serious injury to their persons, reputations, or fortunes. Further, the fear of financial ruin alone is insufficient to establish economic duress; it must also be established that the person applying the coercion acted unlawfully. Defendant claims on appeal that Michigan's definition of duress is unclear and that the "unlawful" aspect should be removed. We disagree. First, the definition is quite clear and needs no clarification. Second, defendant's argument tacitly acknowledges that the definition is indeed clear because she then argues that this Court should remove the definition's key component. Moreover, even if we were inclined to agree with defendant, we are bound by the doctrine of stare decisis and have no power to modify this Court's and our Supreme Court's prior definition of duress by removing the component addressing illegal acts by the person applying the coercion. [Citations, quotation marks, and alteration brackets omitted.]

Here, assuming the truthfulness of plaintiff's affidavit, as we must do for purposes of MCR 2.116(C)(10), any threat by HSBC to foreclose on the mortgage was not unlawful, nor does plaintiff even specifically assert that the alleged foreclosure threat was unlawful. There appears to be no dispute that at the time of the 2013 LMA, plaintiff was in default of the note and mortgage and was facing foreclosure. Indeed, plaintiff makes no argument that HSBC was not entitled to begin foreclosure proceedings when the 2013 LMA was executed. Considering that the mortgage contained a power-of-sale clause, HSBC had every legal right to commence a foreclosure by advertisement. And there was nothing illegal or unlawful about presenting plaintiff with the 2013 LMA, while at the same time reminding him that a foreclosure was looming should he choose not to agree to the 2013 LMA. Plaintiff was certainly aware that foreclosure was on the horizon even absent any express threat of foreclosure by HSBC. Accordingly, the trial court did not err in applying the doctrine of novation.

Affirmed. Having fully prevailed on appeal, HSBC is awarded taxable costs pursuant to MCR 7.219.

/s/ Elizabeth L. Gleicher
/s/ David H. Sawyer
/s/ William B. Murphy